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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/653,525	09/02/2003	Mohammed N. Islam	074036.0126	3348
5073	7590	06/09/2006	EXAMINER	
BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980			LEE, DAVID J	
			ART UNIT	PAPER NUMBER
			2613	

DATE MAILED: 06/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/653,525

Applicant(s)

ISLAM, MOHAMMED N.

Examiner

David Lee

Art Unit

2613

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 March 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☒ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1,7-11,13,14,17,18,24,25,27,33-36,41,43 and 47-74.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


KENNETH VANDERPUYE
SUPERVISORY PATENT EXAMINER

The proposed amendments change the scope of the claimed invention. This change in scope would require further consideration and/or search. In particular, the change in scope is due to the following limitations: "a wavelength division multiplexer coupled to at least some of the plurality of the integrated modules and coupled to an optical splitter, the wavelength division multiplexer operable to combine the modulated output optical signal and at least another of the plurality of optical signal wavelengths into a multiple wavelength output optical signal for communication to the optical splitter."

It is also noted that the amendments will not be entered due to non-compliance with Rule 1.121, as stated in PTO-324.

Regarding Applicant's request for documentary evidence of the Official Notice taken by Examiner, Applicant's attention is directed to Figure 3 of Knox (US Patent No. 6,151,144). A splitter 70 is used to separate a multiple wavelength signal traversing across fiber 65 (see also column 4, lines 37-45 for detailed description). This type of distribution system is common knowledge, notoriously well-known in the art and is widely used in systems to decrease costs (see column 2, line 65 to column 3, line 2). Furthermore, even Harstead (primary reference) teaches the use of signal separators within the system (see, e.g., splitters 26 and 28 of fig. 1). Note also that Harstead discloses that "Alternate PON configurations are, of course, possible. For example, in lieu of a wavelength selective router, a simple power splitter (not shown)—having its output ports optically coupled to respective frequency selective filters (not shown)—may be used to distribute the discrete wavelengths to the appropriate optical network units" (column 3, lines 47-52). Accordingly and in view of the provided evidence, Examiner maintains the position that using signal separators to separate and distribute signals is common knowledge and it would have been obvious to a skilled artisan to implement the separators in order to provide low cost operation.

Applicant argues that it would not have been obvious to include transmitting capabilities in the ONUs of Harstead. Examiner disagrees. The communication system of Harstead is a broadcast and distribution system comprising subscribers requesting and receiving data. A skilled artisan would have been motivated to include some sort of transmitting capabilities in the homes in order to allow subscribers to request specific and timely information from the central office. Therefore, it would have been obvious to a skilled artisan at the time of invention to implement transmitting capabilities of different wavelengths in order to provide user flexibility and reduced contention.

Regarding Applicant's argument that the examiner's conclusion of obviousness of Harstead is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. The signal separating functions and the transmitting capabilities within the ONU are functions that were well known at the time of invention and therefore the obviousness rejection is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).